

September 26, 2011

Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: *Ex Parte* Presentation, CG Docket Nos. 10-145, 10-213, WT Docket No. 96-198

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules¹, CTIA – The Wireless Association® (“CTIA”) files this *ex parte* communication to address the Commission's proposed rules for “Recordkeeping and Enforcement” under the Twenty-First Century Communications Accessibility Act of 2010 (“CVAA”).² CTIA proposes that the Commission incorporate the CVAA's limitation on liability, safe harbor, prospective guidelines and rule of construction provisions into the final rules for informal complaints as affirmative defenses.³ By incorporating these affirmative defenses into the informal complaint process, CTIA believes that the Commission will be able to fulfill its duty to effectively interpret each provision of the CVAA and strike the careful regulatory balance that Congress intended to ensure access to advanced communications services by persons with disabilities.

In addition to other changes proposed by CTIA, the Consumer Electronics Association (“CEA”) and the Telecommunications Industry Association (“TIA”)⁴, CTIA suggests that the final rules for informal complaints allow a manufacturer or service provider to answer the complaint with one of the provisions available under the CVAA as an affirmative defense. Specifically, CTIA proposes to incorporate the following provisions as affirmative defenses to an informal complaint:

(A) A manufacturer or service provider is not responsible for third party equipment or services that the manufacturer or service provider has not relied on to comply with Commission's rules under the CVAA. (*See* CVAA § 2)

¹ 47 C.F.R. § 1.1206.

² Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of 47 U.S.C.).

³ *See* CVAA §§ 2, 716(e)(1)(D), 716(e)(2) and 716(j).

⁴ *See* Comments of CTIA-The Wireless Association®, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-168 (filed Apr. 25, 2011) (“CTIA Comments”); Reply Comments of CTIA-The Wireless Association®, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-168 (filed May 23, 2011) (“CTIA Reply Comments”); Comments of the Consumer Electronics Association, Appendix A, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-168 (filed Apr. 25, 2011); and Telecommunications Industry Association *Ex Parte*, CG Docket Nos. 10-213 & 10-145; WT Docket No. 96-198 (filed Sept. 12, 2011) (recommending a direct resolution process).

(B) The equipment or service subject to a complaint complies with a safe harbor adopted or prospective guideline issued by the Commission. (*See* CVAA §§ 716(e)(1)(D) & 716(e)(2)); or

(C) The equipment or service subject to a complaint meets other accessibility needs and the manufacturer or service provider offers other equipment or services that address the material allegations of the complaint. (*See* CVAA § 716(j)).

If the Commission agreed that such an affirmative defense satisfied the rules and CVAA, it would issue an order dismissing the complaint. If the Commission disagreed that the defense resolved the complaint against the named service provider or manufacturer, it would order the defendant to respond to the complaint in full and proceed with the proposed process.

CTIA urges the Commission to incorporate these affirmative defenses into the informal complaint process in order to effectively interpret each provision of the CVAA and provide industry with the flexibility that Congress intended. As CTIA has previously noted, section 716(j) of the CVAA must be interpreted in a way that gives it clear and independent meaning from section 716(g)(4) under the achievable analysis.⁵ By adopting these affirmative defenses, the Commission can satisfy this obligation and provide the wireless industry with the needed clarity and flexibility to comply with the forthcoming rules.

CTIA also has noted that the goal of the Commission's informal complaint process should be to provide an easy means for consumers to resolve their concerns, and should avoid a litigious process that shifts attention away from the consumer by imposing the burdens of the formal complaint process on the responding entity.⁶ Innovation and competition throughout the wireless ecosystem has created opportunities for service providers and manufactures to offer a variety of accessible solutions to meet the equally diverse needs of people with disabilities.⁷ The modifications suggested by CTIA and other comments will better create an informal complaint process that meets these goals, consistent with Congressional intent to encourage manufacturers and service providers to address accessibility concerns through direct collaboration with consumers.

CTIA believes that the Commission should adopt these proposed modifications to the proposed rules that are suggested herein to continue encouraging the strong collaborative environment that has developed among the wireless industry and consumers to find solutions that further the goal of making wireless products and services accessible to all Americans.

Pursuant to Section 1.1206 of the Commission's rules, this letter is being electronically filed via ECFS with your office and a copy of this submission is being

⁵ *See* CTIA Comments at 12 -13; CTIA Reply Comments at 14.

⁶ *See* CTIA Comments at 31-41; CTIA Reply Comments at 26-29.

⁷ *See* CTIA Comments at 3-6.

provided electronically to the persons listed below. Please let the undersigned know if you have any questions regarding this filing.

Sincerely,

/s/ Matthew Gerst

Matthew Gerst
Counsel, External & State Affairs
CTIA-The Wireless Association®

Attachment

cc: Amy Levine
Jessica Almond
Margaret McCarthy
Angela Giancarlo
Louis Peraertz
Austin Schlick
Rick Kaplan
Janet Sievert
Karen Peltz Strauss
Rosaline Crawford
Eliot Greenwald
Richard Hindman
Diane Griffin Holland
David Hu
Jane Jackson
Andrea Kearney
Elizabeth Lyle
Brian Regan
Marilyn Sonn
Jeffrey Tignor
Julie Veach

ATTACHMENT A

CTIA's Suggested Revisions to the "Recordkeeping and Enforcement" Rules

PART 8 - ACCESS TO ADVANCED COMMUNICATIONS SERVICES AND EQUIPMENT BY PEOPLE WITH DISABILITIES

Subpart D - Recordkeeping and Enforcement

§ 8.21 Answers and replies to informal complaints

(2) If a defendant wishes to set forth an affirmative defense, set forth one of the following defenses and explain why the defense is applicable:

(A) A manufacturer or service provider is not responsible for third party equipment or services that the manufacturer or service provider has not relied on to comply with the this part.;

(B) The equipment or service complies with a safe harbor adopted or prospective guideline issued under this part.; or

(C) The equipment or service meets other accessibility needs and the manufacturer or service provider offers other equipment or services that address the material allegations of the complaint.

(b) If a manufacturer or service provider to whom an informal complaint is directed by the Commission files an answer that sets forth an affirmative defense as permitted in subsection (a)(2) and the Commission determines that such affirmative defense resolves the complaint against such manufacturer or service provider, the Commission shall dismiss the complaint.

§ 8.22 Review and disposition of informal complaints.

(a) The Commission will investigate the allegations in any informal complaint filed that satisfies the requirements of section 8.18(b) of this subpart, and, within 180 days after the date on which such complaint was filed with the Commission, issue an order finding whether the manufacturer or service provider that is the subject of the complaint

(1) _____ is in compliance with sections 2, 716(e)(1)(D), 716(e)(2)), or 716(j) of the Act, or the Commission's implementing rules; or

~~(1)~~(2) _____ violated section 255, 716, or 718 of the Act, or the Commission's implementing rules, and provide a basis therefor, unless such complaint is resolved before that time.
